IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.600 OF 2006

Jashan Textile Mills Private Limited — Petitioner
vs.
The Deputy Commissioner of
Income Tax 4(2), Mumbai & anr. — Respondents

Mr.S.N.Inamdar with Mr.Pramod Y. Vaidya
i/b.Mr.A.K.Jasani for the petitioner.

Mr.D.S.Chopra for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 13th March, 2006

P.C.

Heard Mr.S.N.Inamdar, the learned counsel for the petitioner.

2. The petitioner was served with the notice under Section 148 of the Income Tax Act, 1961 dated 18th March, 2005 recording therein that the assessing officer has reason to believe that its income chargeable for tax for the assessment year 2001-2002 has escaped assessment within the meaning of Section 147 of the Income Tax Act. The assessing officer also supplied the reasons for issuance of the said notice. The reasons read thus:

> "In this case, Return of Income was filed on 30.11.2000 declaring total income of Rs.1,44,01,902/-. The assessee had claimed deduction u/s.80IA of Rs.1,49,54,675/- and u/s.80HHC of Rs.1,44,70,060/-.

> On perusal of the computation of deduction u/s.80HHC, it is observed that the assessee has not reduced deduction claimed u/s.80IA from the profits of the business, while computing the deduction u/s.80HHC. This is in contravention of the provisions of Sec. 80IA(9) of the I T Act.
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> In A.Y.1999-00, CIT*(A) had held that provisions of Sec.80IA(9) were applicable in the case of the assessee and as such, deduction claimed u/s.80IA had to be reduced from the profits while working out deduction u/s.80HHC. Failure to do so has resulted in claim of excess deduction u/s.80HHC. In view of the same, I have reasons to believe that income of Rs.71,45,323/-, chargeable to tax, has escaped assessment for A.Y.2000-01 and the case is fit for issue of notice u/s.148 of the I.T.Act, 1961.
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> Notice u/s.148 of the I.T.Act is being issued to the assessee for A.Y.2000-01."

3. The petitioner filed objections to the notice, inter alia thus: (one) that the assessee made full and true disclosure of the manner in which it computed deduction under Section 80 HHC and 80IA; (two) that the deduction under Section 80HHC and 80IA have to be allowed on the gross basis without making any deduction under Section 80IB and (three) that by the notice dated 18th March, 2005 issued under Section 148 together with the consequential notice dated 22nd August, 2005, the roving and fishing enquiry cannot be made.

4. The objections raised by the petitioner were overruled by the speaking order dated 16th February, 2006.

5. The learned counsel for the petitioner re-iterated the objections that were raised by the petitioner in response to the notice under Section 148 of the Income Tax Act. The learned counsel for the petitioner also relied upon the judgment of the Punjab and Haryana High Court in the case of Vipan Khanna v. Commissioner of Income-tax & ors., **255 ITR 220** and the judgment of the Madras High Court in the case of Commissioner of Income Tax v. M.Chellapan, **198 CTR 490.**

6. We considered the submissions of the learned counsel for the petitioner and in our considered view, it cannot be said that the issuance of notice under Section 148 of the Income Tax Act suffers from any patent error of jurisdiction.

7. In its order dated 16th February, 2006, disposing of the objections raised by the petitioner, the Deputy Commissioner of Income Tax, Circle 4(2), Mumbai recorded that Section 80IA(9) specifically bars any such benefit to the assessee whereby he can claim any deduction already availed of under Section 80IA under any other provisions of Chapter VI-A under the heading, "C-Deductions in respect of certain incomes". The assessing officer also noticed that reliance on Section 80AB does not support the claim of the assessee and that there is no question of roving enquiry but the queries raised were material to the determination of escaped

income.

8. For the aforesaid reasons recorded by the assessing officer in its order dated 16th February, 2006, the reopening of the petitioner's case for the assessment year 2000-2001 cannot be said to be without jurisdiction.

9. In the case of Vipan Khanna, the Division Bench of Punjab and Haryana High Court considered the effect of amendment in Section 143 with effect from 01.04.1989 and held that after the amendment the position has materially changed. Now the Assessing Officer initially processes the return under Section 143(1)(a) and determines the amount payable on refundable on that basis. It is not necessary for him to frame an assessment in each and every case. However, if he chooses to verify the return and frame an assessment he has to issue a notice under subsection (2) of Section 143 and require the assessee to produce his books of account and other materials in support of the return. Thereafter he can make the assessment under subsection (3) of section 143. The notice under subsection (2) of section 143 has to be served within 12 months from the end of the month in which the return is furnished. It was held that in a case where the return is filed and is furnished under section 143(1)(a) of the Income Tax Act and no notice under sub-section (2) of section 143 of

the Act thereafter is served on the assessee within the stipulated of 12 months, the assessment to serve under section 143 would come to an end and the matter becomes final. In our considered view, the judgment of the Punjab & Haryana High Court in the case of Vipan Khanna cannot be applied to the facts of the present case.

10. In so far as the judgement of Madras High Court in the case of M.Chellapan, we find that the Madras High Court relied upon the judgement of the Punjab & Haryana High Court in Vipan Khanna and held that the issue raised in the case before them did not give rise to any substantial question of law. This decision, too, is of not much help to the petitioner.

11. Since in our opinion the notice under section 148 does not suffer from any error of jurisdiction, we are satisfied that no interference is called for in the said notice in extraordinary jurisdiction.

12. Writ petition is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)